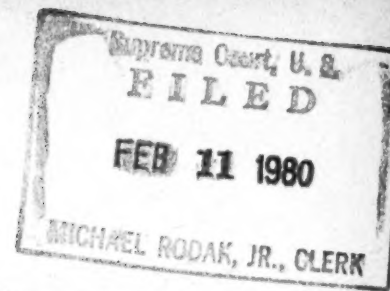


No. 79-807



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

ROBERT PEER, Director of the Department of Public Welfare of
the County of San Diego; and TOM HAMILTON, LUCILLE MOORE,
ROGER HEDGECOCK, JIM BATES, and PAUL ECKERT, as individual
members of the San Diego County Board of Supervisors,
Petitioners,

v.

NANETTE GRIFFETH, JOHN TEBO, and MILDRED TEBO, AND ALL
OTHERS SIMILARLY SITUATED,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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**BRIEF FOR RESPONDENTS IN
OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

Respondents, applicants for General Relief welfare benefits
from San Diego County ("County"), request that the petition
for writ of certiorari by the Director of the County Department
of Public Welfare and members of the County Board of Super-
visors, be denied.

JURISDICTION

The jurisdictional conditions are adequately set forth in the petition.

QUESTION PRESENTED

Do applicants for General Relief welfare benefits from San Diego County have a property interest in obtaining them that is protected under the Due Process Clause of the Fourteenth Amendment?

STATEMENT OF THE CASE

The basic history of the case is adequately set forth in the petition.

ARGUMENT

The only issue decided by the Ninth Circuit was that applicants for General Relief welfare benefits from the County have a property interest in receiving them protected by the Due Process Clause of the Fourteenth Amendment. *Griffeth v. Detrich*, 603 F.2d 118, 120-22 (1979). The only ground raised by the County in support of granting certiorari is an asserted conflict between the Ninth Circuit's decision and the state court decision in *Zobriscky v. Los Angeles County*, 28 Cal.App.3d 930, 105 Cal.Rptr. 121 (1972), *hg. den.* See Supreme Court Rule 19(1)(b). The conflict is the County's creation.

I

THE NINTH CIRCUIT DECIDED ONLY THE PROTECTED PROPERTY INTEREST ISSUE.

Lurking in the petition (4, 6 n.*) are indications that the Ninth Circuit's decision addressed the question of what procedures are required by due process on denials of applications for

General Relief welfare benefits. Not even a strained reading of its opinion warrants such a suggestion.

Evaluating procedural due process claims under the Fourteenth Amendment consists of two, analytically distinct steps. First, a court must decide whether due process applies to the challenged action by determining whether it constitutes a governmental deprivation of a protected property or liberty interest. *Greenholtz v. Nebraska Penal Inmates*, U.S., 99 S.Ct. 2100, 2103 (1979); *Board of Regents v. Roth*, 408 U.S. 564, 569-72 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970). Second, if and only if it applies, the court determines what procedures are due.

The Ninth Circuit only decided the first issue in ruling that applicants for General Relief welfare benefits have a protected property interest. (603 F.2d at 121-22.)* It expressly refrained from indicating any opinion about the resolution of the second question and remanded the case back to the district court for an initial decision on that issue. (*Id.*, 122.) Thus, the only possible conflict with *Zobriscky* must be on its resolution of the protected property interest question.

II

THE NINTH CIRCUIT'S DECISION IS CORRECT, AND DOES NOT CONFLICT WITH THE STATE COURT'S BECAUSE THEY DECIDE DIFFERENT ISSUES.

A. *The Ninth Circuit Correctly Applied The Proper Standards In Determining That State Law Gives Applicants A Protected Property Interest In General Relief Benefits.*

*No one disputes that the County welfare department's denial of an application for General Relief benefits is a "deprivation" by "governmental action."

The Ninth Circuit correctly applied this Court's protected property interest test. It noted that under *Roth* it must "... look to the nature of the interest as defined by state law to determine whether applicants for general relief have a 'legitimate claim of entitlement' to such benefits." (603 F.2d at 120.) Under *Greenholtz* they have such a claim if state law requires granting the benefits upon meeting certain conditions. (*Id.*, 121.)

Applying these standards the Ninth Circuit observed that the language of state statutes requires the County (1) to provide General Relief to all poor persons not otherwise eligible for other benefits (California Welfare and Institutions Code § 17000) and (2) to promulgate implementing standards further specifying eligibility requirements (§ 17001). (603 F.2d at 121.) It found that the County's regulations establish clear and definite standards for obtaining General Relief. (*Id.*) Finally, adhering to this Court's decision in *Bishop v. Woods*, 426 U.S. 341, 344 (1976), it examined state court decisions construing the applicable statutory provisions to define more definitely the contours of General Relief benefits under state law. (*Id.*, 121-22.) It found that the California cases uniformly hold that individuals are entitled to General Relief benefits from a county if they meet the statutory conditions and any valid, implementing county standards. (*Id.*)

A brief review of the holdings of those decisions shows that the Ninth Circuit's conclusion was obviously correct. In 1971 the California Supreme Court ruled that a county has a mandatory duty under § 17000 to provide General Relief benefits to all persons who meet the eligibility requirements of the state statutes and of consistent county regulations. *Mooney v. Picket*, 4 Cal.3d 669, 676-78, 94 Cal.Rptr. 279, 283-85 (1971). Each county must promulgate regulations governing benefit levels and other eligibility requirements. *City and Co. of San Francisco v. Superior*

Court, 57 Cal.App.3d 41, 51, 128 Cal.Rptr. 712, 717 (1976), *h.g. den.* These regulations "... must be consistent, not in conflict with the statute and reasonably necessary to effectuate its purpose." *Mooney v. Picket*, *supra*, 4 Cal.3d at 681, 94 Cal.Rptr. at 285. Together the statutes and county regulations define the exclusive eligibility conditions for obtaining General Relief benefits from a county. (*Id.*, 680, 94 Cal.Rptr. at 286.)

This statutory obligation becomes a debt owed by a county to an applicant on the day he first meets the eligibility requirements. *Mooney v. Picket*, 26 Cal.App.3d 431, 435, 102 Cal.Rptr. 708, 711 (1972) (on remand). If a county improperly denies his application, an individual is entitled to establish his eligibility and recover retroactive General Relief benefits by a suit in state court. *Mooney v. Picket*, *supra*, 26 Cal.App.3d at 434-36, 102 Cal.Rptr. at 711; *Rogers v. Detrich*, 58 Cal.App.3d at 90, 106, 128 Cal.Rptr. 261, 271 (1976). A county cannot deny benefits on the ground it lacks funds. *Mooney v. Picket*, *supra*, 4 Cal.3d at 680, 94 Cal.Rptr. at 286; *Bernhardt v. Alameda Co. Bd. of Supervisors*, 58 Cal.App.3d 806, 811, 130 Cal.Rptr. 189, 192 (1976); *Rogers v. Detrich*, *supra*, 58 Cal.App.3d at 103, 128 Cal.Rptr. at 269.

The County passes over these decisions without a word, obviously because they demonstrate beyond a doubt that the Ninth Circuit properly decided the protected property interest question in accordance with overwhelming state law.

B. *Zobriscky v. Los Angeles County Did Not Address The Protected Property Interest Issue, But Assumed That General Relief Applicants Had Such An Interest.*

What does *Zobriscky* hold that conflicts with the Ninth Circuit's decision? The County's petition is understandably silent on this score. *Zobriscky* contains not one word about the protected prop-

erty interest question. Instead, it deals solely with the issue of whether applicants denied General Relief are entitled to an administrative evidentiary hearing. (28 Cal.App.3d at 932-33, 105 Cal.Rptr. at 122-23.) To reach that question the state court had to find that applicants have a protected interest.

The whole due process discussion in *Zobriscky* revolved around limiting the reach of *Goldberg's* evidentiary hearing requirement to terminations of a recipient's benefits. The court engaged in an interest balancing test of sorts to determine whether such a hearing was required for applicants. The concluding sentence makes it crystal clear that it was only ruling on the issue of what procedures were due: "... We conclude that any general requirement for an evidentiary hearing in connection with the denial of an application for welfare benefits is neither necessary nor desirable nor required as a matter of due process of law." (28 Cal.App. 3d at 933, 105 Cal.Rptr. at 123.) This discussion dispels any notion that the state court decision conflicts with the issue decided by the Ninth Circuit.

The final paragraph of the *Zobriscky* opinion in fact reveals the state court's complete agreement with the Ninth Circuit's reading of state law on the protected property interest question. The state court expressly recognized that any General Relief applicant, claiming to meet the eligibility requirements under a county's program, could file suit in state court to obtain the benefits (28 Cal.App.3d at 933, 105 Cal.Rptr. at 123), a position consistent with the earlier and later case law on which the Ninth Circuit relied.

CONCLUSION

Without any conflict between the Ninth Circuit's decision and *Zobriscky* on the protected property interest question, there is no reason for this Court to exercise its certiorari jurisdiction and the petition should be denied.

Dated: January 28, 1980

Respectfully submitted,

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